

5 Official Opinion of the Compliance Board 55 (2006)

“MEETING” – PRESENCE OF TOWN COUNCIL MEMBERS INVITED BY PRIVATE ORGANIZATION, HELD NOT TO RESULT IN A MEETING SUBJECT TO THE ACT

July 18, 2006

Mr. Jack Jones

The Open Meetings Compliance Board has considered your complaint that the Kensington Town Council violated the Open Meetings Act by conducting a meeting in the private residence of a Council member without notice and an opportunity for the public to attend. For the reasons explained below, we find that this gathering was not a Council meeting subject to the Open Meetings Act. Hence, there was no violation.

I

Complaint and Response

The complaint alleged that on May 9, 2006, a meeting was held in the home of Council member Leanne Pfautz concerning the Circle Manor property, an issue that “affect[s] the entire Town.” In addition to Council member Pfautz, Council member Ken Goldsmith and Mayor Lynn Raufaste were in attendance, resulting in a quorum. The purpose of the meeting was to discuss Circle Manor with County Council member Steve Silverman. The complaint alleged that no notice was provided, and the public was not invited to attend. The complaint raised concerns about the location of the meeting – namely, that it occurred in a private residence rather than a location accessible to the public.

In a timely response on behalf of the Council, Suellen Ferguson, Esquire, denied that the Act was violated. According to the response, the meeting with County Council member Silverman was organized by John Doherty and Duane Thompson, representatives of a citizens’ group known as Citizens United to Save the Circle (“CUSC”). This group was organized to support the preservation of the property popularly referred to as Circle Manor, which is located within the Town of Kensington. Invitations were sent by CUSC. Although the session was initially to be held at Town Hall, another event scheduled at the Town Hall on May 9 might have interfered with the CUSC session. Thus, CUSC decided to conduct the session in a private home instead and accepted Barry Peoples’ offer to host the session. Mr. Peoples is the husband of Council member Pfautz; according to the response,

however, Ms. Pfautz was unaware that her house would be used for the session until the last minute. The response acknowledged that Mayor Raufaste and Council members Pfautz and Goldsmith attended. While the Mayor and Council member Goldsmith each raised a question, as did others in attendance, the “Mayor and Council members did not sit together, did not discuss what was occurring, and did not deliberate about any issue.”

Relying on *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980), the Council’s position is that the May 9 session was a civic group forum not subject to the Open Meetings Act. The Council acknowledged the Compliance Board’s view that a gathering not subject to the Act can nevertheless result in a “meeting” should a quorum of a public body use the occasion to convene for the consideration of public business. 3 *OMCB Opinions* 310, 312 (2003). However, citing select provisions of the municipal charter, the response noted that its counsel has advised the Council that three Council members (excluding the Mayor) are required to constitute a quorum. Thus, even if public business was considered, the Council’s position is that the May 9 session was not a meeting under the Act.

II

Analysis

CUSC, which initiated the gathering and decided who would be invited, is not a “public body” under the Open Meetings Act. §10-502(h). The question we face, then, is whether attendance by the Kensington Town Council members resulted in a *Council* meeting subject to the Act. We shall simply assume, for purposes of this discussion, that a quorum of the Council attended the session.

In *City of New Carrollton v. Rogers*, the Court of Appeals considered the application of the Act to a meeting attended by members of the New Carrollton Council. The Council members were invited by a citizens group in a community proposed for annexation. They, along with the Mayor, attended for the purpose of answering questions about the City of New Carrollton. 287 Md. at 64. Unquestionably, the purpose of the meeting was related to the proposed annexation, a matter of public business that would subsequently come before the Council. Nevertheless, the Court of Appeals concluded that the Act did not apply. Without much explanation, the Court deemed the meeting to be an occasion “not designed or intended for the purpose of circumventing the [Act],” and so excluded from its

requirements. 287 Md. at 71, *citing* former Article 76A, § 8(f), Annotated Code of Maryland. *See* § 10-503(a)(2).¹

In *New Carrollton*, the purpose of the meeting was to allow Council members the opportunity to share information with residents of a community who would be directly affected if their community were to be annexed. In other words, the flow of information was primarily *from* the public officials *to* the community members who had invited them. By contrast, the primary purpose of the May 9 gathering in Kensington was to offer residents the opportunity to press public officials responsible for decisions about the Circle Manor property to see things CUSC's way. As the Court of Appeals recognized in *New Carrollton*, when a public body acts on a matter that is subject to the Act, all deliberations preceding the final decision are subject to the Act as well. 287 Md. at 72. In our view, expressed in many prior opinions, the process of gathering information and various points of view about a matter of public business is an aspect of its consideration, even if the public body's members refrain at that time from discussing the significance of what they are hearing. *See, e.g., 3 OMCB Opinions* 30, 34 (2000) (Opinion 00-8). Consequently, we are not convinced by the Town Council's reliance on *New Carrollton*.

Nevertheless, *New Carrollton* is not the only case to be considered. In *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, *cert. denied*, 334 Md. 631, 640 A.2d 1132 (1994), the issue was whether the Act applied to a meeting of the local Democratic Central Committee ("DCC") at which a majority of members of the Montgomery County Council were present. The Council President gave a briefing on various redistricting plans then pending before the County Council. Although the meeting was not called to voice the DCC's position on this issue, there was a spontaneous decision to vote on the DCC's preferred plan. However, there was no evidence that any Council member participated in the vote. 99 Md. App. at 671-72. The Court of Special Appeals upheld the circuit court's finding that "there was no vote, or deliberation by councilmembers, no meeting to deliberate and decide, no intention to evade the law, no evidence that the law was in fact evaded, and no factual basis for a finding of violation of the Maryland Open Meetings Act." 99 Md. App. at 680 (internal quotations omitted). In summary, the limited role of the Council members did not transform the DCC meeting into a County Council meeting subject to the Act. The Council, as a public body, did not convene, and the fact that Council members were each learning something that might affect their later vote was not enough to invoke the Act.

¹ Unless otherwise noted, all statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

This makes sense, because the gathering was initiated and its agenda determined by an entity other than the public body. The Court of Special Appeals avoided the harsh result of making the public body legally responsible for a meeting over which it had no control. All that the County Council members could do under the circumstances was control their own behavior, and that they did, to the satisfaction of the court.

Applying *Ajamian*, we advised that the presence of a quorum of a public body at a meeting of another entity does not automatically subject the public body to the Act:

[M]embers of a public body do not violate the Act merely by attending a meeting of an entity that is not itself subject to the Open Meetings Act, even if the topic of discussion relates directly to a matter before the public body. ... The critical point [is] that the Act applies only if the public body itself separately conducts public business, as distinct from the proceedings of [a] larger group. If interaction among the members of the public body does not occur, and the larger group is not a mere subterfuge to evade the law, no violation occurs.

1 *OMCB Opinions* 120, 121 (1995) (Opinion 95-4); *see also* 1 *OMCB Opinions* 183, 185 (1996) (Opinion 96-10); 3 *OMCB Opinions* 310, 311-12 (2003) (Opinion 03-12).

The meeting on May 9 was organized by CUSC, which controlled who was invited. Although those invited included members of the Kensington Town Council, it was not intended as a Council meeting. In fact, it appears that the group's concerns were aimed, at least in part, at a member of the County Council rather than the Town Council. While Council members in attendance each asked a question, there is no evidence that they used the opportunity to deliberate among themselves or otherwise conduct themselves in a manner suggesting the convening of the public body. In our view, even if a quorum were present, the limited participation by the Council members did not result in the transformation of the CUSC meeting into a Council meeting.²

² In light of our conclusion, we need not reach the questions concerning the presence of a quorum.

III

Conclusion

The May 9 gathering initiated by CUSC and attended by members of the Kensington Town Council did not result in a Council meeting subject to the Open Meetings Act. Therefore, no violation occurred.

OPEN MEETINGS COMPLIANCE BOARD

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